



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 54 of 2015

Ref: CS/KB

6 November 2015

Attachment: Draft Police Pensions Order

Dear Colleagues

**Draft regulations amending
Police Pensions Regulations 1987,
Police Pensions (Scotland) Regulations 2007,
Police (Injury Benefit) (Scotland) Regulations 2007 and
Police Pensions (Additional Voluntary Contributions) Regulations 1991**

The Scottish Public Pensions Agency has launched a consultation seeking views on draft amendments to the above regulations. The amendments cover the following key areas:

Marriage and Civil Partnership Act

The Marriage and Civil Partnership (Scotland) Act took effect in 2014.

SPPA Circular 2015/1 issued with JCC Circular 21 of 2015 provides some relevant information.

The various amendments for consultation will have retrospective effect from 16 December 2014 and give a member who has entered into a same sex marriage equivalent survivor benefits to those available to scheme members in a civil partnership. The instrument also seeks to implement a transgender exception, allowing survivor benefit expectations to be preserved in the event that a scheme member changes gender.

The Police Pension Scheme 1987 is amended in regulations 4, 9, 10 and 12 to 15. The Police (Injury Benefit) (Scotland) Regulations 2007 are amended at 25, 28 and 32, and a minor change is made to the Police Pension Scheme (Scotland) Regulations 2007 at regulation 33 of these miscellaneous amendments.

Additional Voluntary Contributions

The Police Pensions (Additional Voluntary Contributions) Regulations 1991 provided for an in-house AVC scheme, run since 2002 by Standard Life, although some officers may still have benefits with the previous provider Equitable Life. The scheme closed to new members on 1 October 2010.

Regulations 17 to 22 amend the AVC scheme principally to allow members of it to access the flexibilities first announced in Budget 2014 and subsequently included in the Taxation of Pensions Act 2014.

With effect from 6 April 2015, police officers retiring with a protected pension age before age 55, and any officer aged 55 or over, will no longer be required to purchase an annuity from their AVC provider. Options introduced by the new regulation 11 will now also include flexible drawdown and payment of one or more uncrystallised lump sums. Limits that previously applied to benefits are removed. The flexibilities are being applied administratively pending the introduction of these amendments to the scheme which will have effect from 6 April 2015.

Injury Benefits

On 5 October 2013 Scottish Ministers announced a change to the pensions paid to the widows, widowers and civil partners of police officers killed in the line of duty.

Under the Police (Injury Benefit) (Scotland) Regulations 2007, Special and Augmented awards are payable to survivors of officers who die as a result of an injury sustained on duty. The change means that Special and Augmented pensions will no longer be withdrawn on remarriage, registration of a civil partnership or cohabitation. In addition any Special and Augmented pensions already withdrawn are reinstated from 5 October 2015.

To reflect this change existing Regulation 16 is omitted, and new Regulation 16A removes the provision for the withdrawal of special and augmented awards in the event of the survivor remarrying, forming a civil partnership or co-habiting. In addition, it provides for survivor pensions previously withdrawn will be reinstated, including entitlement to any outstanding injury gratuity. This has effect from 5 October 2015.

Regulations C9 and C9A of the 1987 Scheme are also amended at Regulations 5 and 6 of this instrument to bring this fully into effect.

Secondly, under Schedule 3 of the injury benefit regulations, the level of injury pension payable to recipients can be adjusted depending on "additional benefits" payable by the state. Regulation 31 here includes a retrospective change to include contributions-based Employment Support Allowance as an "additional benefit".

Miscellaneous

Other amendments arise in consequence of an error made when the Crime and Courts Act 2013 (Consequential Amendments and Saving Provision) Order 2013 which was made in September 2013. That instrument made consequential changes

To legislation following the creation of the National Crime Agency, however the instrument applied changes to the whole of the United Kingdom in error. Some of the changes to the Police Pensions Regulations 1987 contained English-specific references and these amendments now reinsert appropriate Scottish references. These are included in regulations 3, 7, 8 and 11 and have effect from 7 October 2013.

Please provide any comments on this consultation to Lesely.stevenson@spf.org.uk no later than **11th December 2015** and in particular on the following;

Do the provisions contained in this amendment adequately provide the requirements of the Marriage and Civil Partnership (Scotland) Act 2014?

And

Do the changes to the AVC scheme enable officers in that scheme to access the new flexibilities that extend to money purchase schemes?

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele', with a horizontal line drawn through the middle of the signature.

CALUM STEELE
General Secretary

2015 No.

PENSIONS

**The Police Pensions (Miscellaneous Amendments) (Scotland)
Regulations 2015**

<i>Made</i>	- - - -	2015
<i>Laid before the Scottish Parliament</i>		2015
<i>Coming into force</i>	- -	2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1 of the Police Pensions Act 1976(a) and all other powers enabling them to do so.

In accordance with section 1(1) of that Act, they have consulted with the Police Negotiating Board for the United Kingdom(b).

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2015 and come into force on [] 2015.

(2) These Regulations have effect as follows—

- (a) regulation 31 has effect from 27th October 2008;
- (b) regulations 3, 7, 8 and 11 have effect from 7th October 2013;
- (c) regulations 4, 9, 10, 12 to 15, 24, 25, 28, 32 and 33 have effect from 16th December 2014;
- (d) regulations 17 to 22 have effect from 6th April 2015;
- (e) regulations 5, 6, 26, 27, 29 and 30 have effect from 5th October 2015.

(3) These Regulations extend to Scotland only.

Amendment of the Police Pensions Regulations 1987

2. The Police Pensions Regulations 1987(a) are amended in accordance with regulations 3 to 15.

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- (a) 1976 c.35. Section 1 was amended by section 2(3) of the Police Negotiating Board Act 1980 (c.10), section 1(1) of the Police and Firemen's Pensions Act 1997 (c.52) and paragraph 129 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13). These powers were extended by section 42 of the Welfare Reform and Pensions Act 1999 (c.30). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1. The requirement for consent by the Minister for the Civil Service under section 1 was transferred to the Treasury by virtue of S.I. 1981/1670, and such consent is not required in the exercise by the Scottish Ministers of the transferred functions by virtue of S.I. 1999/1750 and section 63 of the Scotland Act 1998 (c.46).
 - (b) See section 61 of the Police Act 1996 (c.16) and section 2(3) of the Police Negotiating Board Act 1980 (c.10), which substituted the Police Negotiating Board for the United Kingdom for the Police Council for the United Kingdom. Section 131 of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12) abolishes the Police Negotiating Board, but this provision remains to be commenced in relation to Scotland.

- 3.** In regulation A6 (meaning of certain expressions)—
- (a) in paragraph (5B)—
 - (i) in sub-paragraph (b), omit “pension”; and
 - (ii) omit sub-paragraph (c); and
 - (b) in paragraph (5C), for “to (6)” substitute “to (5)”.
- 4.** In paragraph (2) of regulation A12 (disablement), omit “or the widower of a member of a police force”.
- 5.** After paragraph (4) of regulation C9 (termination of widow’s or civil partner’s pension on remarriage, formation of new civil partnership or cohabitation), insert—
- “(5) Paragraphs (1) to (3) do not apply where the widow or surviving civil partner is entitled to a special pension under regulation 13 (including such a pension granted by way of an augmented award under regulation 14) of the Police (Injury Benefit) Regulations 2007.
- (6) Where entitlement to a pension under this Part was removed by virtue of paragraphs (1) to (3) prior to 5th October 2015 and the recipient of the pension was in receipt of a special pension referred to in paragraph (5), entitlement to a pension under this Part is reinstated with effect from that date.
- (7) Nothing in paragraph (6) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 5th October 2015.”.
- 6.** After paragraph (4) of regulation C9A (termination of widow’s or civil partner’s gratuity on remarriage, formation of new civil partnership or cohabitation), insert—
- “(5) Paragraphs (1) to (3) do not apply where the widow or surviving civil partner is entitled to a special pension under regulation 13 (including such a pension granted by way of an augmented award under regulation 14) of the Police (Injury Benefit) Regulations 2007.
- (6) Where entitlement to any portion of a gratuity under this Part was removed by virtue of paragraphs (1) to (3) prior to 5th October 2015 and the recipient of the gratuity was in receipt of a special pension referred to in paragraph (5), entitlement to the outstanding portion of the gratuity is reinstated.
- (7) Nothing in paragraph (6) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 5th October 2015.”.
- 7.** In paragraph (2A)(b) of regulation E8 (increase of widow’s pension or child allowance during first 13 weeks), for “Schedule 3 to the Police Regulations 2003” substitute “regulation 26 of the Police Service of Scotland Regulations 2013**(b)**”.
- 8.** In paragraph (1) of regulation G1 (pensionable and average pensionable pay), for “Secretary of State under regulation 22 of the Police Regulations 2003” substitute “Scottish Ministers under regulation 14 of the Police Service of Scotland Regulations 2013”.
- 9.** In regulation G6 (payments by women to enhance widowers’ awards)—
- (a) in paragraph (1A), after “2006” insert “or the Police.....”;
 - (b) in paragraph (3), at the end insert—
 - “, or
 - (g) in the case of a woman by whom contributions are payable under regulation G2 on or before the date on which the Police Pensions (Miscellaneous Amendments)

(a) S.I. 1987/257; relevant amending instruments are S.I. 1989/733, S.I. 1990/805, S.I. 1992/1343, S.I. 1992/2349, S.I. 1994/641, S.I. 1997/1429, S.S.I. 2000/193, S.S.I. 2003/406, S.S.I. 2004/486, S.S.I. 2005/495, S.S.I. 2006/285, S.S.I. 2007/68, S.S.I. 2008/387, S.S.I. 2010/85, S.S.I. 2011/154, S.S.I. 2013/184 and S.I. 2013/2318.

(b) S.S.I. 2013/35.

(Scotland) Regulations 2015 come into force, and who elects to secure the counting of pensionable service after 5th April 1988 and before 17th May 1990 (not being service which is already the subject of an election to enhance her surviving spouse's or surviving civil partner's award), the date on which those Regulations come into force, or

(h) in the case of a woman by whom contributions become payable under regulation G2 after the date on which the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2015 come into force, and who elects to secure the counting of pensionable service after 5th April 1988 and before 17th May 1990 (not being service which is already the subject of an election to enhance her surviving spouse's or surviving civil partner's award), the date on which those contributions become payable”;

(c) in paragraph (4A), for “or (f)” substitute “, (f), (g) or (h)”;

(d) in paragraph (13)(a), for “or (f)” substitute “, (f), (g) or (h)”.

10. In regulation J1 (policeman with a guaranteed minimum)—

(a) in paragraph (4B)—

(i) after “leaving”, insert “a surviving spouse who is the same sex as the policeman”;
and

(ii) before “surviving civil partner”, insert “surviving spouse or”;

(b) after paragraph (4B), insert—

“(4C) Where—

(a) the regular policeman who has died was a woman by virtue of a full gender certificate having been issued under the Gender Recognition Act 2004, and

(b) at the time of her death the regular policeman was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the regular policeman is to be treated for the purposes of this regulation as if the certificate had not been issued.”; and

(c) in paragraph (5B), after “Where a” insert “surviving spouse or”.

11. In Schedule A (glossary of expressions)—

(a) in the definition of “maternity leave”, for “has the same meaning as in regulation 3 of the Police Regulations 2003” substitute “means leave taken in accordance with a determination under regulation 25(7) of the Police Service of Scotland Regulations 2013”;

(b) in the definition of “parental leave”, for “regulation 33(8) of the Police Regulations 2003” substitute “regulation 25(8)(b) of the Police Service of Scotland Regulations 2013”;

(c) in the definition of “part-time service”, for “regulation 5(1) of the Police Regulations 2003” substitute “regulation 3 of the Police Service of Scotland Regulations 2013”; and

(d) in the definition of “sick leave”, for “taken in accordance with regulation 33(5) of the Police Regulations 2003” substitute “in respect of injury or illness taken in accordance with the determination of the Scottish Ministers under regulation 25(5) of the Police Service of Scotland Regulations 2013”.

12. In Part I of Schedule C (widow's ordinary pension)—

(a) in paragraph 1—

(i) in sub-paragraph (2A), for “a widower” substitute “the surviving spouse”;

(ii) in sub-paragraph (2B), after “payable to” insert “a woman who is the surviving spouse or who is”;

(iii) after sub-paragraph (2B), insert—

“(2BA) Where—

- (a) a female police officer who has died was a woman by virtue of a full gender certificate having been issued under the Gender Recognition Act 2004, and
- (b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”; and

- (iv) in sub-paragraph (2C), after “regulation C1 to” insert “a man who is the surviving spouse or who is”; and
- (b) in paragraph 3, for “man” substitute “surviving spouse”.

13. In Part III of Schedule C (widow’s accrued pension)—

- (a) in paragraph 1—
 - (i) in sub-paragraph (1A), for “a widower” substitute “the surviving spouse”;
 - (ii) in sub-paragraph (1B), after “regulation C4 to” insert “a woman who is the surviving spouse or who is”;

(iii) after sub-paragraph (1B), insert—

“(1BA) Where—

- (a) a female police officer who has died was a woman by virtue of a full gender certificate having been issued under the Gender Recognition Act 2004, and
- (b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”; and

- (iv) in sub-paragraph (1C), after “regulation C4 to” insert “a man who is the surviving spouse or who is”; and
- (b) in paragraph 3(4), for “man” substitute “surviving spouse”.

14. In Part IV of Schedule C (widow’s pension in case of post-retirement marriage)—

- (a) in paragraph 4, for “a widower” substitute “the surviving spouse”;
- (b) in paragraph 5, after “regulation C5(3) to” insert “a woman who is the surviving spouse or who is”;
- (c) after paragraph 5, insert—

“**5A.** Where—

- (a) a female police officer who has died was a woman by virtue of a full gender certificate having been issued under the Gender Recognition Act 2004, and
- (b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”; and

- (d) in paragraph 6, after “regulation C5(3) to” insert “a man who is the surviving spouse or who is”.

15. In Part V of Schedule C (widow’s requisite benefit pension)—

- (a) in paragraph 1—
 - (i) in sub-paragraph (a), for “a widower” substitute “the surviving spouse”;
 - (ii) in sub-paragraph (b), after “payable to” insert “a man who is the surviving spouse or who is”;

- (b) in paragraph 1A, after “payable to” insert “a woman who is the surviving spouse or who is”; and

(c) after paragraph 1A, insert—

“**1B.** Where—

- (a) a female police officer who has died was a woman by virtue of a full gender certificate having been issued under the Gender Recognition Act 2004, and
- (b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”.

Amendment of the Police Pensions (Additional Voluntary Contributions) Regulations 1991

16. The Police Pensions (Additional Voluntary Contributions) Regulations 1991(a) are amended in accordance with regulations 17 to 22.

17. In paragraph (3) of regulation 2 (interpretation), insert the following definitions before the definition of “approved additional voluntary contributions provider”—

““the 2014 Act” means the Taxation of Pensions Act 2014(b);

“the 2009 Regulations” means the Registered Pension Schemes (Authorised Payments) Regulations 2009(c);”.

18. For regulation 11, substitute—

“Retirement pensions

11.—(1) A participator may apply some or all of the proceeds of an investment made under regulation 9 to arrange with an insurer—

- (a) payment of a lifetime annuity;
- (b) payment of a lifetime annuity and a pension commencement lump sum;
- (c) a lump sum commutation payment that—
 - (i) reflects the value of benefits referred to in sub-paragraph (a) or (b), and
 - (ii) meets the requirements of regulations 11 and 12 of the 2009 Regulations;
- (d) any payment to the participator that complies with the requirements of the 2014 Act.

(2) Paragraph (1) is subject to paragraphs (10) to (13).

(3) Subject to paragraphs (4) and (5), the approved additional voluntary contributions provider must provide a participator with an option to receive benefits under paragraph (1)(a) to (c).

(4) Any annuity payable in accordance with paragraph (1)(a) or (b) must—

- (a) be incapable, in whole or in part, of surrender, assignation or commutation;
- (b) commence not earlier than the participator’s normal minimum pension age (within the meaning of section 279(1) of the Finance Act 2004(d));
- (c) be payable to the participator for life.

(5) A lump sum commutation payment referred to in paragraph (1)(c) may be paid in respect of benefits payable under paragraph (1)(a), (b) or (d).

(a) S.I. 1991/1304.

(b) 2014 c.30.

(c) S.I. 2009/1171.

(d) 2004 c.12.

(6) The approved additional voluntary contributions provider may, in addition to providing a participator with benefits under paragraph (3), provide a participator with alternative benefit options under paragraph (1)(d).

(7) A participator must, not earlier than 3 months before the date from which the participator wishes those benefits under these Regulations to be provided, make a benefits election to the police authority specifying—

- (a) whether and which benefits are to be provided under paragraph (3) or, alternatively, paragraph (6);
- (b) the approved additional voluntary contributions provider who is to provide each benefit;
- (c) for whom, if anyone, a dependant's benefit is to be provided;
- (d) if more than one benefit is to be provided, either—
 - (i) the proportion of the amount secured by the total investments made under regulation 9 that is to be applied to the purchase or arrangement of each of them; or
 - (ii) the dependants' benefits to be provided expressed as a percentage of the participator's benefits;
- (e) in respect of every annuity to be provided—
 - (i) the annual rate of the annuity;
 - (ii) whether it is to be payable for life or for a fixed period;
 - (iii) whether its rate is to be fixed or vary in accordance with the Index or increase yearly by a specified percentage or (if lower) increase by the increase in the Index for the year in question;
 - (iv) whether the rate may reduce;
- (f) in the case of a participator who chooses a life-time annuity referred to in paragraph (1)(a) or (b) and who dies within the period of 5 years beginning with the date on which the annuity commences, whether, if the annuity had continued at the rate in force at the time of the participator's death, a lump sum is to be paid equal to the balance that would have been payable during the remainder of that period.

(8) If there are exceptional circumstances of serious ill-health, the police authority may in their discretion realise the pension investments without purchasing any pension, and in that event the amount obtained becomes payable as a lump sum.

(9) More than one benefits election may be made under paragraph (7) and an election must—

- (a) be in writing, and
- (b) contain such information as the police authority request.

(10) Upon receipt of a notice of election under paragraph (7), the police authority must, as soon as reasonably practicable, realise the investments made under regulation 9 and apply the proceeds in the manner specified in it.

(11) Where a participator dies before retirement or after retirement but before the benefits under this regulation are paid, the investments made under regulation 9 must be realised and are payable as a lump sum in accordance with regulation 15(2).

(12) The police authority may realise the investments made under regulation 9 and apply the proceeds to the purchase of benefits under these Regulations from an insurer in such form as appears to the police authority to be suitable where the conditions in paragraph (13) are satisfied.

(13) Those conditions are—

- (a) the participator's retirement date falls on or after 1st December 1999; and
- (b) the participator has attained the age of 75 and has not given a notice of election under paragraph (7) before doing so."

19. In regulation 12A (pension sharing on divorce or on the dissolution of a civil partnership)—

- (a) in paragraph (3), for "regulation 11(6)" substitute "regulation 11(12)"; and
- (b) in paragraph (7)—
 - (i) for "Paragraphs (2) to (10) of regulation 11 apply, substitute "Regulation 11 applies";
 - (ii) for sub-paragraph (c), substitute—
 - "(c) the reference to lifetime annuity shall be a reference to a pension credit member's lifetime annuity;"; and
 - (iii) omit sub-paragraph (e) and the word "and" immediately before it.

20. Omit regulation 13 (benefit limits).

21. In regulation 15 (payment by responsible person)—

- (a) in paragraph (2)(a), for "regulation 11(5)" substitute "regulation 11(7)(f)";
- (b) omit paragraphs (4) and (5); and
- (c) for sub-paragraph (a) of paragraph (7), substitute—
 - "(a) so far as the regulation relates to a payment under regulation 11(1), the authorised additional voluntary contributions provider,".

22. Omit Schedule 2 (benefit limits).

Amendment of the Police (Injury Benefit) (Scotland) Regulations 2007

23. The Police (Injury Benefit) (Scotland) Regulations 2007(a) are amended in accordance with regulations 24 to 32.

24. In paragraph (4) of regulation 7 (disablement), for "widower" substitute "surviving spouse".

25. In regulation 13 (adult survivor's special award)—

- (a) in paragraph (10), for "a widower" substitute "the surviving spouse";
- (b) in paragraph (11), after "paragraph (7) to" insert "a woman who is the surviving spouse or who is"; and
- (c) in paragraph (12), after "paragraph (7) to" insert "a man who is the surviving spouse or who is".

26. Omit regulation 16 (termination of adult survivor's award on remarriage or other event).

27. After regulation 16, insert—

"Reinstatement of entitlement to adult survivor's award

16A.—(1) The revocation of regulation 16 by the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2015 has the effect of reinstating entitlement to—

- (a) a pension with effect from 5th October 2015; and
- (b) any portion of a gratuity which has not been paid due to operation of that regulation.

(a) S.S.I. 2007/68; relevant amending instrument is S.S.I. 2007/201.

(2) Nothing in paragraph (1) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 5th October 2015.”.

28. In paragraph (1) of regulation 20 (adult dependent relative’s special pension), for paragraphs (c) and (d) substitute—

“(c) where the member was a woman who was married or in a civil partnership, and where her spouse or civil partner was permanently disabled at the time the member died, to her surviving spouse or surviving civil partner,”.

29. In paragraph (3)(a) of regulation 21 (death gratuity), omit “or 16”.

30. In paragraph (3) of regulation 43 (payment and duration of awards), omit sub-paragraph (a).

31. In paragraph 7(3)(c) of Schedule 3 (police officer’s injury award), after “(dependants)” insert—

“; or

(iii) any employment and support allowance under Part 1 of the Welfare Reform Act 2007^(a) (other than one which is income-related)”.

32. In paragraph 2(a) of Schedule 5 (adult dependent relative’s special pension), for “widower” substitute “surviving spouse”.

Amendment of the Police Pensions (Scotland) Regulations 2007

33. In paragraph (2)(a)(iii) of regulation 40 (survivors) of the Police Pensions (Scotland) Regulations 2007^(b), omit the words after “marry each other”.

A member of the Scottish Government

St Andrew’s House,
Edinburgh

2015

(a) 2007 c.5.
(b) S.S.I. 2007/201.

EXPLANATORY NOTE

(This note is not part of the Regulations)